

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

|                        |   |                        |
|------------------------|---|------------------------|
| RALPH W. MCCLAIN, JR., | : |                        |
| Plaintiff              | : |                        |
| vs.                    | : | CIVIL NO. 1:CV-10-0035 |
| DR. KALE, et al.,      | : |                        |
| Defendants             | : |                        |

*O R D E R*

AND NOW, this 15th day of March, 2011, upon consideration of the report (doc. 26) of the magistrate judge, filed February 15, 2011, to which no objections were filed, and upon independent review of the record, it is ordered that:

1. The magistrate judge's report is adopted.
2. The motion to dismiss (doc. 14) of defendants Bleich, Musial, Bath, Wilkes, Corbett, Rathburn, Klopotoski and Lucas is granted as follows.
3. The claims for monetary damages against defendants Bleich, Musial, Bath, Wilkes, Corbett, Rathburn, Klopotoski and Lucas in their official capacities are dismissed without leave to amend because such claims are barred by the Eleventh Amendment.
4. The claims based on verbal abuse against defendants Bleich, Musial, Bath, Wilkes, Corbett, Rathburn, Klopotoski and Lucas are dismissed without leave to amend.
5. The claims based on conspiracy against defendants Bleich, Musial, Bath, Wilkes, Corbett, and Rathburn are dismissed but with leave to amend.
6. The plaintiff is granted leave to file an amended complaint on his conspiracy claims. Any amended complaint shall be complete in all respects. It shall contain all of the plaintiff's claims against all of the defendants. It shall be a new pleading which stands by itself as an adequate complaint without reference to the complaint already filed. It shall not incorporate by reference any of the previous complaint. Any

amended complaint shall be titled as an amended complaint and shall contain the docket number of this case.

7. Plaintiff shall comply with paragraph 6 of this order within twenty-one days of the date of this order. If he fails to do so, this action shall proceed solely on the claims that survive in the original complaint.

8. This matter is remanded to the magistrate judge for further proceedings.

/s/William W. Caldwell  
William W. Caldwell  
United States District Judge